

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
Developing a Unified Intercarrier)	CC Docket No. 01-
92		
Compensation Regime)	
)	

COMMENTS OF NUVOX, INC.

NuVox, Inc. (“NuVox”), by and through its attorneys, hereby files these comments in response to the Further Notice of Proposed Rulemaking issued by the Federal Communication Commission (“FCC” or “Commission”) in the above-captioned proceeding.^{1/} NuVox is a facilities-based local exchange carrier that provides integrated voice and data services primarily to small business customers. NuVox exchanges traffic extensively with other carriers and, therefore, has a keen interest in this proceeding.

INTRODUCTION AND SUMMARY

Rationalization of current intercarrier compensation is critical to the continued development of competition.^{2/} NuVox, like other carriers, spends enormous resources ensuring that calls are properly placed in the correct, albeit artificial, jurisdictional and regulatory category. These are resources

^{1/} Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, *Further Notice of Proposed Rulemaking*, 20 FCC Rcd. 4685 (2005) (“*Intercarrier Compensation NPRM*”).

^{2/} See *Intercarrier Compensation NPRM* at 4701-02, ¶ 31.

that could be used to enhance competition and develop more innovative services.

To assure that any new intercarrier compensation system remains fair and supports competition, NuVox urges the Commission to continue to use its powers to regulate the rates, terms, and conditions of intercarrier compensation. Market failures abound. The Commission correctly notes, for example, the continued problem of “terminating access monopolies” which requires continued regulation.^{3/} Moreover, the enormous imbalance in bargaining power between CLECs and the Bell Companies precludes reliance on market-based negotiations to establish fair interconnection terms. In fact intercarrier negotiations have been replete with Bell Company efforts to require competitive carriers to absorb ever greater transport costs, despite repeated rejection of those requirements by Commissions and the courts.^{4/}

^{3/} *Inter-carrier Compensation NPRM* at 4698, ¶ 24.

^{4/} *See, e.g., Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration, et al.*, CC Docket Nos. 01-218, 00-249, 00-251, Memorandum Opinion and Order, 17 FCC Rcd. 27039, 27064 ¶ 51-52 (2002) (“*FCC Arbitration Order*”); *Application 01-11-045, et al., Global NAPs, Inc. (U-6449-C) Petition for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996, et al.*, Decision 02-06-076 at 21 (Cal. PUC June 27, 2002) (“*GNAPs California Order*”) (concluding that it was inappropriate for the ILEC to charge the CLEC for transport of local traffic on the ILEC’s side of the POI); Docket No. 02-0253, *Global NAPs Illinois, Inc. Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 To Establish an Interconnection Agreement with Verizon North, Inc., f/k/a GTE North Inc. and Verizon South, Inc., f/k/a GTE South Inc.*, Order on Rehearing at 10 (Ill. Commerce Comm’n

Moreover, the sheer size of the Bell Companies, particularly SBC and Verizon (even before recently announced mergers), ensure that the majority of long distances calls carried on their networks both originate and terminate from their own customers. This means that these companies are effectively paying themselves access charges at incremental cost and placing unaffiliated long distance companies required to pay excessive access fees at a competitive disadvantage.

To address these various market failures, NuVox highlights several areas critical to continued development of facilities-based competition. First, the Commission must ensure that ILECs cannot impose unreasonable costs on competitive carriers by requiring interconnection deep within the ILECs' network. NuVox thus generally supports the ICF "Edge" concept, but suggests that it should be further clarified to prevent the unreasonable proliferation of interconnection points. Second, the Commission must require transiting at cost-based rates. Third, the Commission must ensure that

Nov. 7, 2002) (*GNAPs Illinois Order*) (concluding that the VGRIPs proposal imposes an impermissible penalty on the CLECs' right to choose a single point of interconnection and reconfirming that "[e]ach party . . . should assume financial responsibility for transport on its side of any POI established for the exchange of telecommunications traffic."); Docket No. 13542-U, *Point of Interconnection and Virtual FX Issues*, Final Order at 6 (Ga. PSC July 23, 2001) (*Georgia Virtual FX Order*) (finding that "pursuant to the Federal Act, the FCC rules and FCC Orders, [the incumbent] is responsible for the costs of transporting its originating traffic to the CLEC's POI" and that such a conclusion was supported not only on legal but policy grounds). *See also* MCIMetro Access Transmission Servs., Inc. v. BellSouth Telecomm., Inc., 352 F.3d 872, 881 (4th Cir. 2003); Southwestern Bell Tel. Co. v. Pub. Utils. Comm'n of Texas, 348 F.3d 482, 486-87 (5th Cir. 2003).

competitive carriers have continued, reasonable access to signaling networks. Finally, but crucially, the Commission must establish a reasonable transition period that, at a minimum, coincides with real world business planning cycles, and that reduces rate shock. NuVox intends to provide further detail on these and other crucial intercarrier compensation and interconnection issues as this proceeding progresses.

I. NETWORK INTERCONNECTION RULES ARE CRITICAL

The rules governing the physical interconnection of competing network providers are crucial to the maintenance of a competitive marketplace for telecommunications services. The interconnection rules first established in the *Local Competition Order*^{5/} remain valid and important, particularly those rules precluding LECs from charging other carriers for originating traffic,^{6/} and those rules that permit a CLEC to establish a single point of interconnection in a LATA.^{7/} These rules have withstood numerous challenges by ILECs.^{8/}

^{5/} *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98 and 95-185, First Report and Order, 11 FCC Rcd. 15499 (1996) (subsequent history omitted) (“*Local Competition First Report and Order*”).

^{6/} See 47 C.F.R. § 51.703(b).

^{7/} *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration, et al.*, CC Docket Nos. 01-218, 00-249, 00-251, Memorandum Opinion and Order, 17 FCC Rcd. 27039, 27064 ¶ 52 (2002) (“Under the Commission’s rules, competitive LECs may request

NuVox would thus oppose requiring points of interconnection (“POIs”) below the access tandem level.^{9/} NuVox would also oppose a rule to require a POI at every access tandem in a LATA, regardless of the level of traffic being exchanged at that tandem.^{10/} Such a rule could require CLECs to establish POIs where traffic volumes would not typically warrant undertaking such costs under sound network engineering principles. NuVox thus supports those commenters that advocate that volume and distance thresholds for POIs must be established.^{11/} One option for such a threshold would be to require a POI at more than one Access Tandem in a LATA only if, at the proposed additional Access Tandem, the CLEC and ILEC exchange more than 8.9 million minutes of traffic per month for three consecutive months and the additional POI is more than 20 miles from the existing POI. NuVox

interconnection at any technically feasible point. This includes the right to request a single point of interconnection in a LATA.”); *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd. 9610, 9634-35 ¶ 72 (2001) (“Under our current rules, interconnecting CLECs are obligated to provide one POI per LATA.”) (citing 47 C.F.R. § 51.321).

^{8/} See, e.g., *MCIMetro Access Transmission Servs., Inc. v. BellSouth Telecomm., Inc.*, 352 F.3d 872, 881 (4th Cir. 2003); *Southwestern Bell Tel. Co. v. Pub. Utils. Comm’n of Texas*, 348 F.3d 482, 486-87 (5th Cir. 2003); *FCC Arbitration Order* at 27064 ¶ 51-52; *GNAPs California Order* at 21; *GNAPs Illinois Order* at 10; *Georgia Virtual FX Order* at 6.

^{9/} See The Intercarrier Compensation Forum Plan at 4-5 (“*ICF Plan*”) (Appendix A to comments submitted in CC Docket No. 01-92, Oct. 5, 2004).

^{10/} See *Id.* at 4-6.

^{11/} *Intercarrier Compensation NPRM* at 4728, n.295 and accompanying text.

also proposes that additional Access Tandems must have available collocation space and ILEC fiber.

II. ANY NEW INTERCARRIER COMPENSATION REGIME MUST INCLUDE MANDATORY TANDEM TRANSIT SERVICE WITH RATES BASED ON FORWARD-LOOKING ECONOMIC COSTS

As the Commission recognized, the “availability of transit service is increasingly critical to establishing indirect interconnection” as required by section 251(a)(1) of the 1996 Act.^{12/} With the proliferation of CLECs, CMRS carriers, and rural carriers, transiting services are crucial because transiting is the only efficient way to exchange traffic among these carriers.^{13/} The costs of negotiating and establishing direct interconnection between every carrier that exchanges traffic would be both staggering and wasteful. It is also a fact that generally the only carriers with sufficiently ubiquitous networks and connections to provide transiting services are the ILECs. Thus, in most situations, CLECs will require transit service provided by the ILEC.

NuVox thus generally supports ICF’s call for regulating what it calls Tandem Transit Service.^{14/} Specifically, Tandem Transit Service should be declared by the FCC to be an interstate common carrier service, with providers prohibited from discriminating among requests for service and with

^{12/} *Intercarrier Compensation NPRM* at 4741, ¶ 125.

^{13/} *See Id.* at ¶ 125-26.

^{14/} *ICF Plan* at 25 (“Tandem Transit Service is a switched transport function that is provided by a third party and that is used to effectuate interconnection between two carriers within a LATA (or in a non-LATA state, local calling area) that are not directly interconnected.”).

restrictions on discontinuance or withdrawal of the service.¹⁵ A necessary corollary to requiring common carrier transiting services is prohibiting any carrier from demanding direct interconnection where traffic volumes are insufficient to warrant the costs. Recognizing the potential that tandem exhaust may require an alternative solution in discrete circumstances, NuVox nevertheless suggests that the Commission adopt a reasonable traffic volume threshold.

Given the critical importance of transiting services, the Commission should not now establish a time-frame for the possible future deregulation of transiting service requirements or rates. Moreover, the Commission should not allow ILECs to use their unique position, in many cases, as the only feasible provider of Tandem Transit Service to turn transit service into a significant profit center at the expense of smaller carriers who are then less able to compete in local markets. Instead, the Commission should oversee Tandem Transit Service rates to ensure that they are based on the ILECs' incremental economic costs of actually providing the transit services.

III. ANY NEW INTERCARRIER COMPENSATION REGIME MUST INCLUDE RULES TO ENSURE CONTINUED REASONABLE ACCESS TO SS7 SIGNALLING

Interconnection of SS7 signaling systems is as important as the interconnection of voice and data facilities. As the ICF plan notes, carriers must separately interconnect their SS7 networks because SS7 signaling is

¹⁵ *Id.*

carried over separate facilities.^{16/} Any new intercarrier compensation regime must include provisions to require interconnection of SS7 networks under reasonable terms and at reasonable rates. The SS7 interconnection proposal put forth in the ICF Plan¹⁷ is a good starting point.

IV. THE COMMISSION SHOULD ESTABLISH A REASONABLE TRANSITION PLAN

Although most carriers will welcome the establishment of a more rational system of intercarrier compensation, the Commission must recognize that most carriers are also business operations with revenue and cash flow systems and projections based on the currently extant intercarrier compensation regime. Rapid change to a new system can result in shocks to internal business systems, and potentially to the broader telecommunications market. In order to minimize the possibility of such shocks, and in order to afford carriers ample opportunity to adjust their internal systems to any new system the Commission adopts, the FCC should consider phasing in the new system over a minimum of five years. Many businesses operate with a standard five-year business planning cycle. Phasing in the new intercarrier compensation regime over the course of a full five-year business planning cycle will minimize disruption and allow smoother integration of the changes into ongoing business systems.

^{16/} *ICF Plan* at 13.

¹⁷ *ICF Plan* at 13-16.

As an additional means to smooth transition for carriers that may have to adjust to significant changes in revenue and cash flow, the Commission should consider a transition plan that results in smaller changes in the first years and accelerates in the later years, after carriers have been given some time to adjust to the new intercarrier compensation reality.

V. CONCLUSION

NuVox intends to further expand on the issues it has identified in these initial comments as the proceeding progresses.

Respectfully submitted,

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May 23, 2005

CERTIFICATE OF SERVICE

I, Ernest C. Cooper, hereby certify that on this 23rd day of May 2005, the foregoing Comments of NuVox, Inc., were filed electronically through the FCC's Electronic Comments Filing System (ECFS) and copies were served on the following as indicated:

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